

OSTER
Researching Services

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19933

FEB 15 9 43 AM '96

February 15, 1996

Mr. Vernon Williams
Surface Transportation Board
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recording with the Surface Transportation Board is an Interim Use Agreement dated 2/5/96 between the following parties:

Lessor: Electro-Motive Division,
General Motors Corporation
LaGrange, IL 60525

Lessee: Union Pacific Railroad

The equipment involved in this transaction includes 100, SD90MAC locomotives, #8000-8099.

Please record this agreement as a primary document. The filing fee of \$21 is enclosed. Thank you for your assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosure

Counterparts - Mary Ann Oster

1993

INTERIM USE AGREEMENT

By and between

UNION PACIFIC RAILROAD COMPANY

AND

ELECTRO-MOTIVE DIVISION
GENERAL MOTORS CORPORATION

Effective as of February 5, 1996

THIS INTERIM USE AGREEMENT (this "Agreement"), dated as of February 5, 1996, between ELECTRO-MOTIVE DIVISION OF GENERAL MOTORS CORPORATION, a Delaware corporation ("EMD") and UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UP").

WITNESSETH:

WHEREAS, EMD and UP are parties to a Purchase Agreement, dated September 1, 1995 (the "Purchase Agreement"), calling for EMD to manufacture and deliver to UP, and UP to accept and pay for, one-hundred (100) SD90MAC locomotives to bear road numbers 8000 - 8099, inclusive (collectively, the "Locomotives"); and

WHEREAS, UP has assigned the Purchase Agreement to Union Pacific Corporation, a Utah Corporation ("UPC"), and EMD has consented to such assignment; and

WHEREAS, UPC intends to finance the acquisition of the Locomotives from EMD pursuant to one or more permanent forms of financing (the "Financing"), and deliveries of the Locomotives are scheduled to begin prior to the time UPC will have completed said Financing; and

WHEREAS, UPC desires that UP be permitted to use the Locomotives pending establishment of such Financing and purchase by UPC (or another assignee of the Purchase Agreement) of such Locomotives under the Purchase Agreement, solely as a bailee thereof, and EMD is willing to grant such temporary custody and possession to UP, upon the terms and conditions hereinafter provided;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. EMD, as lessor, hereby agrees to deliver the Locomotives to UP, as lessee, f.o.b. EMD's LaGrange, Illinois plant or f.o.b. VMV in Paducah, Kentucky, as of the date each of them is released from manufacturing. UP shall execute a Certificate of Acceptance pursuant to Section 2 hereof and hereby represents to EMD that it is authorized to act as an agent for UPC to accept such Locomotives hereunder and that such acceptance shall also constitute acceptance on behalf of UPC under the Purchase Agreement. UPC covenants to EMD that it intends to establish the Financing, and the purchase price for the Locomotives will be paid as required by the Purchase Agreement. Except for those provisions of this Agreement which, in order to be given effect should survive termination, this Agreement shall automatically terminate with respect to a Locomotive upon the first to occur of (a) one hundred twenty (120) days after its acceptance pursuant to Section 2 hereof, or (b) the date title to such Locomotive is transferred by EMD pursuant to Section 2 hereof, in either event without further action by or notice to either party hereto.
2. Upon delivery and acceptance of each Locomotive hereunder, UP's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the

receipt of delivery of each such Locomotive under this Agreement. Risk of loss or damage to the Locomotives shall pass to UP at such time each of the Locomotives is delivered to UP pursuant to Section 1 hereof, provided that the Locomotives shall not be delivered to UP until such time as a Certificate of Acceptance is executed therefor. During the term hereof for so long as the purchase price (as set forth in the Purchase Agreement) with respect to a Locomotive shall not have been paid, or if the purchase price shall have been paid, so long as EMD shall not have been directed to transfer title pursuant to the next succeeding sentence, title to such Locomotive shall remain in EMD, and UP's rights and interests therein shall remain solely that of possession, custody and use as bailee hereunder. EMD shall transfer title to a Locomotive at the time UPC has paid or has caused to be paid to EMD, its assignee or designee the purchase price therefor (as set forth in the Purchase Agreement) and UPC, or UP, as agent for UPC, has directed EMD to deliver bills of sale, substantially in the form of Exhibit B hereto, to the ultimate purchaser of said Locomotive specified by UPC, or UP, as agent for UPC, which purchaser shall be UPC or such other party to which UPC shall have assigned the Purchase Agreement. At the time so specified, EMD shall execute and deliver to the party so specified by UPC or UP, as agent for UPC, one or more warranty bills of sale evidencing such transfer of title free of all liens and encumbrances arising by, through or under EMD prior to such transfer and such other documents as may be reasonably needed to evidence such transfer and assignment of the Purchase Agreement and the termination of EMD's rights under this Agreement with respect to the Locomotives so transferred.

3. The execution of a Certificate of Acceptance, substantially in the form of Exhibit A hereto, pertaining to any such Locomotive shall constitute acceptance of such Locomotive hereunder and under the Purchase Agreement, and any warranty or other time period set forth in the Purchase Agreement applicable to such Locomotive shall be deemed to commence from the date of such acceptance.
4. Provided the purchase price for each of the Locomotives (as set forth in the Purchase Agreement) is paid to EMD or its assignee or designee within the applicable grace period (as described and set forth in Section 2A of the Purchase Agreement), such payment shall satisfy all rental obligations of UP hereunder with respect to such Locomotives and UP shall not be required to pay additional rent for its use and possession of such Locomotives hereunder or other any amounts specified in Section 2B of the Purchase Agreement. In the event that payment of such purchase price is delayed beyond the applicable grace period for any reason, UP agrees to pay to EMD or its assignee or designee, as the case may be, daily rent for each such Locomotive, calculated in accordance with Section 2B of the Purchase Agreement. Any such payment by UP shall be credited towards UPC's obligations under the Purchase Agreement.
5. UP shall permit no liens or encumbrances arising by, through or under it to attach to the Locomotives, prior of the transfer of title thereto, and it agrees to:
 - (a) Indemnify and save EMD harmless from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to attorneys' fees and costs, which may arise by,

through or under UP during the time any of the Locomotives are in the possession of UP and subject to this Agreement, and

(b) Pay any and all taxes (excluding any tax measured by EMD's net income and any franchise, capital, net worth or similar tax imposed on EMD, or any tax imposed in lieu of any of the foregoing), fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or EMD while the Locomotives are in the possession of UP, because of EMD's ownership or because of the use, operation, management or handling of the Locomotives during the term of this Agreement.

The obligations of UP in this Section 5 shall survive termination of this Agreement.

6. During the term hereof, UP shall, at its own expense, cause the Locomotives in its possession to be maintained in accordance with the manufacturer's recommendations and shall, at its option, repair or promptly pay or cause to be paid to EMD or its assignee or designee the purchase price (as set forth in the Purchase Agreement) for any of the Locomotives which may be damaged beyond economic repair or destroyed by any cause during the term of this Agreement.
7. UP acknowledges that it takes its possessory interest in the Locomotives subject to those provisions of the Purchase Agreement relating to warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.
8. EMD agrees that it shall permit no liens or encumbrances arising by, through or under it to attach to the Locomotives following payment of the purchase price therefor (as set forth in the Purchase Agreement) and during the period that title to such Locomotives is retained by EMD hereunder.
9. Prior to delivery under this Agreement, each Locomotive shall be numbered with a road number, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each such Locomotive, the following legend in letters not less than one inch in height.

**OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
RECORDED WITH THE SURFACE TRANSPORTATION BOARD**

UP hereby agrees to indemnify EMD against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Locomotives. If during the term of this Agreement such markings on any Locomotive in the possession of UP shall at any time be removed, defaced or destroyed, UP shall promptly cause the same to be restored or replaced.

10. The parties agree that at the end of the term of UP's use of the Locomotives hereunder, UP shall not have the option of returning the Locomotives to EMD, but rather UP shall be required to pay to EMD or its assignee or designee the purchase price for the Locomotives (or cause the same to be paid) as required by the Purchase Agreement. In the event UP

shall, in violation of its obligations under the Purchase Agreement, fail to pay such purchase price (or cause payment to be for the Locomotives to be made) when due, EMD or its assignee or designee may, in addition to any other remedies it may have, enter upon the premises of UP or such other premises where the Locomotives may be and take possession of all or any Locomotives for which payment has not been made, and thenceforth hold, possess and enjoy the same free from any right of UP, or its successors or assigns. In such event, EMD or its assignee or designee may use such Locomotives for any purposes whatsoever, and may sell and deliver such Locomotives to others upon such terms as EMD or its assignee or designee may see fit in its sole discretion, it being understood and agreed that UPC shall remain liable to EMD or its assignee or designee under the Purchase Agreement for (a) an amount equal to any difference in the price paid by such other parties and the purchase price due from UPC under the Purchase Agreement, plus (b) an amount equal to all expenses of EMD or its assignee or designee incident to such sale including, but not limited to, the expenses of withdrawing the Locomotives from the service of UP, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. UPC shall pay the forgoing amounts from time to time upon demand by EMD or its assignee or designee.

11. Nothing in this Agreement shall affect EMD's warranty or other service obligations under the Purchase Agreement.

12. UP and EMD each represent and warrant to the other that:

(a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;

(c) The rights of EMD as herein set forth and the title of EMD to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and

(d) No governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereto against it or the bailment of the Locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.


13. UP agrees that the execution by EMD of this Agreement, or the delivery by EMD of the Locomotives as contemplated by this Agreement, shall not relieve UPC of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Purchase Agreement.

14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.


IN WITNESS WHEREOF, each party hereto has caused this Interim Use Agreement to be executed by its authorized representative.

Attest:

UNION PACIFIC RAILROAD COMPANY



Assistant Secretary


By: 

Title: ASSISTANT TREASURER


Date: FEBRUARY 5, 1996

Attest:

ELECTRO-MOTIVE DIVISION
GENERAL MOTORS CORPORATION



Attesting Secretary

By: 

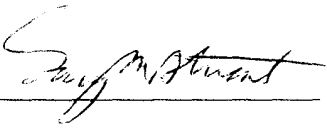
K. A. McCanless

Director of Treasury and Finance

Date: FEBRUARY 7, 1996

The terms and conditions of this Interim Use Agreement that specifically describe obligations or rights of UPC are hereby accepted and agreed to:

UNION PACIFIC CORPORATION

By: 

Title: VICE PRESIDENT & TREASURER

Date: FEBRUARY 5, 1996

Commonwealth

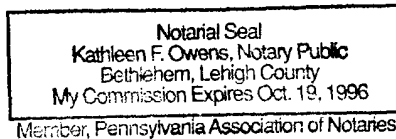
State of PENNSYLVANIA)
) ss:
County of LEHIGH)

On this 5th day of FEBRUARY, 1996, before me personally appeared
JOHN B. LARSEN to me personally known, who, being by me duly sworn,
says that he is ASSISTANT TREASURER of UNION PACIFIC RAILROAD
COMPANY, that the foregoing instrument was executed on behalf of said corporation by
authority of its Board of directors, and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Kathleen F. Owens
Notary Public

My Commission expires:



Commonwealth

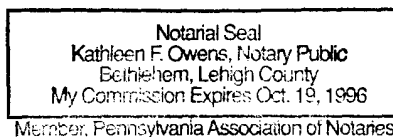
State of PENNSYLVANIA)
) ss:
County of LEHIGH)

On this 5th day of FEBRUARY, 1996, before me personally appeared
GARY M. STUART to me personally known, who, being by me duly sworn,
says that he is VICE PRESIDENT & TREASURER of UNION PACIFIC
CORPORATION, that the foregoing instrument was executed on behalf of said corporation by
authority of its Board of directors, and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Kathleen F. Owens
Notary Public


My Commission expires:



State of Illinois)
) ss:
County of Cook)

On this 7 day of February, 1996, before me personally appeared Keith A. McCanless, to me personally known, who, being by me duly sworn, says that he is the Assistant Secretary of Electro-Motive Division, General Motors Corporation, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]


Notary Public

My Commission expires:

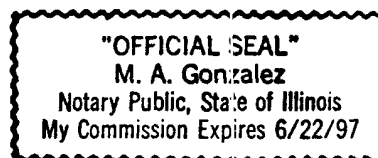


EXHIBIT A

Certificate of Acceptance

I, the duly authorized representative of Union Pacific Railroad Company ("UP"), do certify that I have inspected and hereby accept delivery of the following locomotive(s):

TYPE OF LOCOMOTIVE: SD90MAC

PLACE ACCEPTED: _____

DATE ACCEPTED: _____

NUMBER OF UNITS: _____

MARKED: Union Pacific Railroad Company

ROAD NUMBERS: _____

I do further certify that the foregoing Locomotives are in good order and condition, subject to EMD's performance of its warranty obligations with respect to such Locomotives.

UNION PACIFIC RAILROAD COMPANY

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B

WARRANTY
BILL OF SALE
NO.

GENERAL MOTORS CORPORATION, ELECTRO-MOTIVE DIVISION (the "Builder") in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid, the receipt of which is hereby acknowledged, does hereby sell, assign, grant, bargain, transfer, convey and set over unto _____ ("Buyer"), all right, title and interest of the Builder in and to the following units of railroad equipment (the "Units"), which have been delivered by the Builder pursuant to that certain Purchase Agreement dated September 1, 1995:

<u>NUMBER OF UNITS</u>	<u>DESCRIPTION OF EQUIPMENT</u>	<u>ROAD NUMBERS</u>
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()	Model SD90MAC 6-Axle, 6-Motor Turbocharged Diesel Electric Locomotives	
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Builder hereby warrants to Buyer, its successors and assigns, that (a) on the dates of delivery of each of the Units by the Builder under the Purchase Agreement, the Builder was the lawful owner of the Units and had full legal and beneficial title to the Units free and clear of all mortgages, pledges, security interests, liens, encumbrances, leases, dispositions of title or other charges or claims or rights of others of any kind arising by, through or under EMD (all of the foregoing are hereinafter referred to as "Liens"), and (b) on the date hereof the Builder is the lawful owner of the Units with good right and full power to sell the Units and has full legal and beneficial title to the Units, free and clear of all Liens. Builder further warrants to Buyer that on the date hereof, Builder is hereby conveying to Buyer all of Builder's rights, title and interest in and to each such Unit.

The Builder covenants and agrees that it will defend such title to each such Unit against the demands of all persons whomsoever based on Liens originating prior to the date hereof.

IN WITNESS WHEREOF, the Builder has caused this instrument to be signed by a duly authorized representative and its corporate seal to be hereto affixed, duly attested, this _____ day of _____, _____.

ATTEST:

GENERAL MOTORS CORPORATION
ELECTRO-MOTIVE DIVISION

Attesting Secretary

By: _____
Title: _____

**SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001**

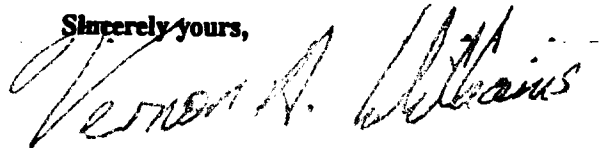
2/15/96

Mary Ann Oster
Research Consultant
Oster Researching Services
12897 Colonial Drive
Mt. Airy, MD., 21771

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/15/96 at 9:45AM , and assigned recordation number(s). 19933.

Sincerely yours,



Vernon A. Williams
Secretary

Enclosure(s)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

